Knapp-Sherrill Company *and* United Food and Commercial Workers International Union, AFL-CIO, Local No. 171. Case 23-CA-8088

10 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

Upon a charge filed by the Union 11 August 1980, the General Counsel of the National Labor Relations Board issued an amended complaint 14 February 1983[1] against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The amended complaint alleges that the Union is the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); *Frontier Hotel*, 265 NLRB 343 (Nov. 9, 1982).) The amended complaint further alleges that since 29 July 1980 the Company has refused to bargain with the Union and to furnish the Union with certain information necessary for and relevant to the Union's performance of its duties as the employees' collective-bargaining representative. On 4 March 1983 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 21 March 1983 the General Counsel filed a Motion for Summary Judgment. On 25 March 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the amended complaint and response to the Notice to Show Cause, the Respondent admits that it has refused to bargain with the Union and that it has refused to provide the necessary and relevant information requested by the Union. The Respondent denies, however, that it has violated Section 8(a)(5) and (1) by its actions. The Respondent asserts its doubt that the Union is the lawful successor to Amalgamated Meat Cutters, AFL-CIO, Local No. 173. The Respondent also claims that it has a good-faith doubt as to the Union's majority status in the appropriate bargaining unit. The General Counsel contends that the successorship question has been answered by the Board in a related representation proceeding, Case 23-AC-42, and that the majority status of the Union also has been considered by the Board in another related representation proceeding, Case 23-RM-383. The General Counsel contends that the Respondent is attempting to relitigate the issues it raised in the two related representation proceedings. We agree with the General Counsel.

Our review of the entire record herein, including the records in the two related representation proceedings, reveals the following: In 1972, Amalgamated Meat Cutters Local No. 173, herein referred to as Local 173, was certified in Case 23-RC-3595 as the representative of the Company's production and maintenance employees. Thereafter, the Respondent and Local 173 entered into a series of collective-bargaining agreements, the most recent of which was effective from 30 September 1977 through 29 September 1980.

In late 1977, negotiations were conducted by Local 173's leadership towards a merger of Local 173 with Amalgamated Meat Cutters Local Union No. 171, herein Local 171. The merger was approved and effective 2 January 1978 Local 171 became the surviving local union. The Respondent agreed to recognize Local 171 as the representative of its employees and as the contracting union in the existing agreement originally signed by Local 173. On 12 August 1980 Local 171 filed a petition in Case 23-AC-42 seeking to amend the 1972 certification in Case 23-RC-3595. Local 171 requested that the name of the originally designated representative, Local 173, be deleted and that United Food and Commercial Workers International Union, AFL-CIO, Local Union No. 171, be substituted therefor.

At the hearing, the Respondent opposed the amendment to certification for two reasons: (1) the merger of Local 173 and Local 171 resulted in a different entity rather than in the continuation of former Local 173; and (2) the 1979 merger of the Retail Clerks International Association, AFL-CIO, with the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, which resulted in the creation of the United Food and Commercial Workers International Union, AFL-CIO-CLC, created an entity which is not the legal successor to either of the merged unions. On 25 September 1980 the Regional Director for Region 23 issued a Decision and Order Amending Certification of Representative.

[1] The original complaint was issued 26 September 1980.

The Respondent filed a request for review of the Regional Director's decision. On 13 August 1982 the Board issued its Decision on Review.[2] The Board, after a full discussion of all the issues, essentially approved the merger of Local 173 and Local 171 finding, in any event, that under the circumstances the Respondent was estopped from challenging the procedures involved in the merger.[3] The Board also found that Local 171 was a continuation of Local 173. With regard to the Respondent's contention that the Union is not a successor to Local 171, the Board noted that it had previously affirmed the merger of the two International unions[4] and that the change in name of the certified union from Local 173 to the Union did not affect the continuity of representation. Thus, it appears that, with regard to the successorship issue, the Respondent is attempting to raise issues which were raised and determined in Case 23-AC-42.

As noted, the Respondent also claims that it has a good-faith doubt that the Union represents a majority of its employees in the appropriate unit. On 31 July 1980 the Respondent filed a petition in Case 23-RM-383. By letter dated 2 December 1982 the Regional Director for Region 23 dismissed the petition finding that it did not raise a question concerning representation. The Regional Director noted the Board had resolved the successorship question in its published decision in *Knapp-Sherrill*, supra, and that the Board had issued a complaint in the instant case alleging the Respondent's unlawful refusal to bargain with the Union. The Regional Director indicated that, in view of the Board's disposition of the AC petition and the outstanding complaint, the Respondent may not raise a question concerning representation. Thereafter, the Respondent filed a request for review of the dismissal of its petition, reiterating that objective considerations existed which form the basis for its good-faith doubt of the Union's majority status, and that the Board acted on its RM petition in Case 23-AC-42, some 2 years later. On 27 January 1983 the Board denied the Respondent's request for review noting that there was an outstanding complaint containing allegations that precluded a question concerning representation from being raised at that time.[5] Thus it appears that, with regard to this issue also, the Respondent is attempting to relitigate matters already settled in a related representation proceeding.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a Texas corporation, is engaged in the manufacture, processing, and sale of citrus juice and vegetables at its facility in Donna, Texas, where it annually sold and shipped products, goods, and materials valued in excess of $50,000 directly to points outside the State of Texas. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

On 20 June 1972 former Local 173 was certified in Case 23-RC-3595 as the collective-bargaining representative in said unit. As previously noted, pursuant to a valid merger, and pursuant to a decision of the Board, that Certification of Representative was amended to substitute the Union for Local 173. The Union is the exclusive representative of

[2] 263 NLRB 396 (1982).

[3] Then Chairman Van de Water and Member Hunter relied solely on the estoppel theory in deciding the case. Chairman Dotson was not on the Board at the time of its previous decision in 263 NLRB 396. However, the Chairman agrees with the rationale of Member Hunter and then Chairman Van de Water that the Company was estopped in raising the merger issue. Chairman Dotson disavows any other rationale in that previous decision.

Member Dennis agrees that the Respondent's voluntary recognition of Local 171 estops it from challenging the procedures employed in the merger of the two locals, as the Board found in the previous decision, 263 NLRB 396, and relies solely on that ground and on the Board's finding that Local 171 is a successor to Local 173 in granting the Motion for Summary Judgment.

[4] *Warehouse Groceries Management*, 254 NLRB 252, 256 (1981); *Texas Plastics*, 263 NLRB 394 (1982).

[5] Member Hunter dissented, as he would have reinstated the petition and consolidated it with the instant unfair labor practice case.

the employees in the following appropriate unit within the meaning of Section 9(a) of the Act.

> All production and maintenance employees including truckdrivers and warehousemen employed by the Respondent at its Donna, Texas plant, excluding all fieldmen, office clerical employees, guards, watchmen and supervisors as defined in the Act.

B. *Refusal to Bargain and the Respondent's Refusal*

Since 15 July 1980 the Union has requested the Company to bargain, and since 29 July 1980 the Company has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

C. *The Request to Furnish Information and the Respondent's Refusal*

Since on or about 9 July 1980 the Union has requested that the Respondent furnish it with the following information:

> 1. The names of all the employees in the bargaining unit, addresses, the date of hire, the rates of pay, dates of birth, marital status, job classification, department, and any other pertinent information to the employees.
>
> 2. A copy, if any, of any profit and/or pension fund plan, the amount of the Employer and employee contributions.
>
> 3. A copy, if any, of all rules and regulations governing the conduct of employees.

Since on or about 29 July 1980 the Respondent has failed and refused, and continues to fail and refuse, to furnish the Union with the information requested.

By letter dated 5 November 1982 the Union requested that the Respondent furnish it not only with the information described above, but also with the following additional information:

> 1. Number of dependents of each employee.
>
> 2. Description of any and all fringe benefits currently provided to all employees such as holiday, jury duty payment, funeral pay, paid vacations, etc., including health and welfare, total cost, company share of expense and employee's share of expense.
>
> 3. Job descriptions.
>
> 4. If merit wages are provided, the names, amount of merit increases, the date such merit increases were provided, the method and/or procedure used to provide such merit increases.

The Respondent has failed and refused, and continues to fail and refuse, to provide the additional information requested by the Union.

The information requested, as described above, is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the appropriate unit.

CONCLUSIONS OF LAW

By refusing on and after 29 July 1980 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, and by refusing on and after 29 July 1980 to furnish the Union with certain requested information necessary and relevant for the purposes of collective-bargaining, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. As we have also found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with certain information, we shall order the Respondent to furnish the Union with such information.

ORDER

The National Labor Relations Board orders that the Respondent, Knapp-Sherrill Company, Donna, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers International Union, AFL-CIO, Local No. 171, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Refusing to bargain with the above-named labor organization by refusing to furnish the requested information relevant and necessary for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the fol-

lowing appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All production and maintenance employees including truckdrivers and warehousemen employed by the Respondent at its Donna, Texas plant excluding all field men, office clerical employees, guards, watchmen and supervisors as defined in the Act.

(b) Upon request, furnish the above-named labor organization with the following information: the names of all employees in the bargaining unit, addresses, dates of hire, rates of pay, dates of birth, marital status, number of dependents, job classification and description department, any other information pertinent to the employees; a copy, if any, of any profit and/or pension fund plan, the amount of the employer and employee contributions; a copy, if any, of all rules and regulations governing the conduct of employees; a description of any and all fringe benefits currently provided to all employees such as holiday, jury duty payment, funeral pay, paid vacation, etc., including health and welfare, total cost, company share of expense and employee's share of expense; and, if merit wages are provided, the names, amount of merit increases, the date such merit increases were provided, and the method and/or procedures used to provide such merit increases.

(c) Post at its facility in Donna, Texas, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 23, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers International Union, AFL-CIO, Local No. 171, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to provide the Union with the requested relevant and necessary information described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All production and maintenance employees including truckdrivers and warehousemen employed by the Employer at its Donna, Texas plant excluding all field men, office clerical employees, guards, watchmen and supervisors as defined in the Act.

WE WILL, upon request, provide the Union with the following information: the names of all employees in the bargaining unit, addresses, dates of hire, rates of pay, dates of birth, marital status, number of dependents, job classification and description, department, and any other information pertinent to the employees; a copy, if any, of any profit and/or pension fund plan, the amount of the employer and employee contributions; a copy, if any, of all rules and regulations governing the conduct of employees; a description of any and all fringe benefits currently provided to all employees such as holiday, jury duty payment, funeral pay, paid vacation, etc.,

including health and welfare, total cost, company share of expenses and employee's share of expense; and, if merit wages are provided, the names, amount of merit increases, the date such merit increases were provided, and the method and/or procedure used to provide such merit increases.

KNAPP-SHERRILL COMPANY